

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA**

GAYLORD STEVENS,

Plaintiff,

v.

Case No. CIV-16-531-Raw

**MUSKOGEE, OKLAHOMA ANIMAL
CONTROL, et al.,**

Defendants.

ORDER

Before the court is the motion of certain defendants to dismiss. Plaintiff, appearing *pro se*, alleges multiple claims pursuant to 42 U.S.C. §1983 against multiple defendants. Plaintiff was convicted in Texas state court for possession of child pornography, and those convictions were recently affirmed. *Stevens v. State*, 2017 WL 411382 (Tex.App. - Tyler 2017). Initially, plaintiff was arrested for cruelty to animals, and six horses that were determined to be in poor condition were moved “to another location for treatment.” *Id.* at *1.

Plaintiff was arrested in the City of Lindale, Texas, which he has named as a defendant. The other movants were police officers or other employees and/or representatives of Lindale at the time of the litigated events.

Movants contend that the statute of limitations bars plaintiff’s claims. The court agrees. Claims under §1983 are subject to Oklahoma’s two-year statute of limitations for actions “for injury to the rights of another.” *See Kripp v. Luton*, 466 F.3d 1171, 1174-75

(10th Cir.2006). All of the contact and interaction between the plaintiff and movants occurred between December 28, 2013 and October 31, 2014. This action was filed December 6, 2016, outside the statute of limitations period.* Dismissal is appropriate.

Also, for the reasons stated in this court's order granting the motion to dismiss of defendant James Cowart, plaintiff has failed to establish a *prima facie* showing of personal jurisdiction over the movants. Dismissal is appropriate on this alternative ground as well. The court notes that defendants Sherry Foster and David Wilson were not named as movants in the motion itself, but are named in the reply (#106). The motion shall be granted as to those two as well.

A second motion to dismiss (#90) has been filed, which again names City of Lindale, the Lindale "City Prosecutor" (the motion asserts there is no such position) and Robert Nelson as movants. Additionally, Marion Cox has been named as a movant. This motion shall be granted for the same reasons recited above.

It is the order of the court that the motions to dismiss (##89 & 90) are hereby granted. City of Lindale, Texas, City of Lindale "City Prosecutor," Daniel Somes, David Craft, Mike Lazarine, Alvin Gordon, Curtis Philpot, Chad McElyea, James Burnett, Kevin Petty, Marion Cox, Sherry Foster, David Wilson and Robert Nelson are dismissed as party defendants.

*Plaintiff's trial began on June 8, 2015, but to the extent plaintiff envisions a claim for malicious prosecution, one element is termination of the proceedings in plaintiff's favor. *See Myers v. Koopman*, 738 F.3d 1190, 1195 (10th Cir.2013). This element is not satisfied herein.

IT IS SO ORDERED this 18th day of AUGUST, 2017.



RONALD A. WHITE
UNITED STATES DISTRICT JUDGE